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File No. Q Representation of People/57
Legal Department

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Subject:— Opinions under the Representation of People (Preparation of Electoral Rules) 1950.

C O N T E N T S.

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By reason of clause (e) of rule 2 of the Representation of the People (preperation of Electoral Rolls) Rules, 1950, read with G.R.P. & S.D.No.8055/46-H(2), dated 30th October 1950, the Revising Authority for (1) the villages of the former Katkol Mahal, and (2) the three villages of Hampiholi, Revadikop and Maradgi transferred from Nargund Mahal(Dharwar District) was not the Civil Judge, Ramdurg Taluka, but the Civil Judge at Bail-Hongal, and the Civil Judge, Dharwar, respectively. Rule 10 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950. requires that simultaneously with the publication of the electoral roll under rule 9, a notice shall be published in like manner in For V calling upon persons entered in the roll to lodge in the manner herein prescribed any objection they may have to make to the roll as published and calling upon persons claiming to be entered on the roll to lodge their claims in the manner hereinafter prescribed. Such notice shall specify for each constituency or electoral area the Revising Authority to whom and the place at which and the time referred to in sub-rule (2) within which any such claim or objection may be preferred. It is no doubt true that this rule in terms requires that the Revising Authority should be specified in the notice Form V, and the Form also makes provision accordingly. The period which was originally of 21 days has been extended and is available till the 15th of January 1951. The specification of the Civil Judge, Ramdurg, in the notice Form V is the only difficulty in this case. The question for consideration is whether the Revising Authorities, namely, the Civil Judges at Bail-Hongal and Dharwar can refuse to entertain the objections and claims

which may have been lodged in response to the notice in Form V as before the Civil Judge, Ramdurg. It is apparent that whatever be the nature of the misdescription in the notice, such misdescription cannot divest the Revising Authority of his regular jurisdiction. The Civil Judges at Bail-Hongal and Dharwar continued to be the Revising Authorities despite the misdescription in the notice and were entitled to receive the objections and claims. Supposing that, despite the description in the notice, some person had lodged his claim or objection before the Civil Judge, Bail-Hongal or Dharwar for the villages coming within their jurisdiction, they would in law be bound to entertain them and could not have refused to do so on the mere ground that a different Judge has been described as the Revising Authority in the notice. Nor can the Civil Judges at Bail-Hongal and Dharwar refuse to entertain the claims and objections on the ground that they have not been made to them within the limitation period; for, the limitation period is still available till the 15th of January 1951. The Rules do not attach any sanctity to the actual reception of the claims and objections by the Revising Authority itself; for, sub-rule (3) makes it clear that such claims and objections can be addressed even to the Electoral Registration Officer.

In my opinion, therefore, the Revising Authority, namely, the Civil Judges at Bail-Hongal and Dharwar are bound in law to entertain the claims and objections if they are forwarded to them before the 15th of January 1951 by the Electoral Registration Officer or even by the Civil Judge at Ramdurg in case he may have received them originally.

Id/- P. M. LAD.

Remembrancer of Legal Affairs.

U.R. to P.&S.D.No.91, dated 2nd January 1951.

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Representation of People (Preparation of Electoral Rolls) Rules, 1950. Rule 2(e).

Appointment of Joint Civil Judges as Revising Authorities.

Appointments of Civil Judges are made under section 22 of the Bombay Civil Courts Act, 1869. The fifth para. of section 23 provides for the appointment of Joint Civil Judges for the purpose of assisting the Civil Judges. It is true that the provisions of the Act applicable to Civil Judges are made applicable to Joint Civil Judges. But since there is a specific provision in the Bombay Civil Courts Act, 1869, for the creation of the posts of Joint Civil Judges, it cannot be said that the term Civil Judge includes also Joint Civil Judges. Besides in his capacity as a revising authority the person concerned would not be acting in his capacity as Joint Civil Judge but as a persone designate. If it is intended to entrust the function of the Revising Authority to joint Civil Judges too, it would be necessary so to appoint them specifically. The view expressed in this behalf in para 1 of the P. & S.D. office note is not ~~xxxx~~correct

Id/-P. M. LAD.

Remembrancer of Legal Affairs.

U.R. to P.& S.D.No.1368, dated the 22nd January, 1951.

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18933 of 12-9-1951.

Submitted with reference to the P.& S.D. Note at page 4 ante. The Collector of Satara (South) reports that one Shri G. D. Hingmire has informed him that the proposes to collect anna one per elector to meet the election expenses in connection with the General Elections which he is going to contest. The question for consideration is whether the collection of the fud is objectionable. The P.& S.D. has expressed the view that neither the Representation of the People Act, 1951, (XLIII of 1951), nor the Representation of the People (Conduct of Elections and Election Petition) Rules, 1951, contain provision prohibiting a person from collecting funds for meeting eléction expenses. The R.L.A. is requested to advise.

Id/-

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Collection of contribution from electors is not prohibited under section 125(1) of the Representation of the People Act, 1951 (XLIII of 1951) or any other provision of the Act or the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. In England, a subscription to pay the expenses of a candidate was held not illegal, although it might entail on such candidate the responsibility of seeing that the money of which he had the benefit was not corruptly spent (vide page 292 of Rogers on Elections, Vol. II). The only provision on the subject is contained in the Form No. 26 of Return of Expenses appended to the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. The candidate is required to show in thereturn the name of each person from whom he received moneys on account of the election and the amount received from each such person.

2. Although the view taken by Political and Service Department that the collection of contribution as proposed is not prohibited appears to be correct, in such matters that Department should consult the Election Commission.

Id/- J. R. DHURANDHAR.
Remembrancer of Legal Affairs.

U.R. to P. & S.D. No.15820, dated the 5th October 1951.

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It is proposed that the last date for receiving nominations for the coming elections to the House of the People and the Bombay Legislative Assembly shall be 24th November 1951. It is also proposed that the nominations will be received by the Returning Officers at their usual Headquarters from 15th November to 24th November 1951 between the hours of 11 A.M. to 3 P.M. The question for the consideration of the R.L.A. is whether when the proposed notification is issued on 15th November and a similar notice under section 31of the Representation of the People Act, 1951 is issed by the Returning Officer on the seme day, a person can claim as of right to present his nomination paper on the 18th November, which is a Sunday and which falls between the period 15th November to 24th November as prescribed under the proposed notification. Under section 31 of the Representation of the People Act, 1951, on the issue of a notification under section 30, the Returning Officer for constituency shall give a public notice of the intended elections in such form and manner as may be prescribed, inviting nominations of candidates for such elections and specify the place at which the xxxxxxxxxxxxxxxxxxxx nominations papers are to be delivered. Section 33(1) of the said Act provides that on or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer or seconder, between hours of 11 O'clock in the forenoon and 3 O'clock in the afternoon deliver to the Returning Officer at the place specified in the notice issued under section 31 a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and the two persons referred to in sub-section (2) as proposer and seconder. Section 10 of the General Clauses Act, 1897, applies to the interpretation of an Act of Parliament. As the notification is issued under section 30 of the Representation of the People Act, 1951, the principles of section 10 will apply to the interpretation of the notification issued thereunder. Section 10 of the General Clauses Act provides that when an act or proceeding is directed or allowed to be done or

taken in any office on a certain day or within a perescribed period, then, if the office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the office is open. Under sections 20 and 22 of the Representation of the People Act, all Returning Officers and Assistants Returning Officers are to be officers of Government. The Headquarters of the Returning Officers are the Headquarters of the office in which they work. All such Government offices are closed on Sundays. The proposed notification proposes to fix the 24th November 1951 as the last date for making nomination. The said notification would be issued on the 15th November and a similar notice will be issued on the same date and a person can make a nomination on any day between 15th and 24th November 1951, both days inclusive, that is during a period of ten days. Under clause (a) of section 30 of the Act, the last date for making a nomination shall be a date not earlier than the eighth day after the date of publication of the notification. The earliest date which Government could fix under the notification is 22nd November, but Government have thought it fit to give two more days, and the last date fixed is 24th November. It may be noted that no fixed number of days have been specified under the notification during which nominations could be made. But the period begining from the 15th November and ending on 24th November has been specified as the period during which the nominations could be made. So the question of curtailing the period by one day, that is from ten days to nine days, does not arise even if the office of the Returning Officer is kept closed on Sunday, the 18th November. There is, therefore, no legal objection to observing sunday, the 18th November, as a holiday as usual. As the last date fixed falls on Saturday, no person desiring to make nomination will be prejidicially affected

even by closure of the Returning Officer's office on Sunday the 18th instant.

Id/- J.R. DHURANDHAR.

Remembrancer of Legal Affairs.

U.R.to P.& S.D.No.954-Confl., dated the 14th November 1951.

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L.D.R.I. No. 24402
dt/ 24-11-51.

Submitted.

Shri S. K. Bedekar, who was appointed as a Returning Officer, has proceeded on leave on account ofillness and the Asstt: Returning Officer Shri S.G. Walavalkar, is attending to his duties at present. The C.E.O., however, considers that if the A.R.O. is subsequently absent there would be nobody to carry on his work and in order to avoid such a contingency he proposes to ask the Elec. Commissioner to notify a successor in place of Shri Bedekar. The R.L.A. is requested to advise whether this is likely to lead to any complications as the notice under Sec. 31 etc. must have been issued in the name of Shri Bedekar.

Id/-

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Appointment of Returning Officer

Representation of the People Act, 1951.

Under section 22(1) of the Representation of the People Act, 1951, it would be competent for the Election Commission to appoint more than one Assistant Returning Officer but all these Assistant Returning Officers will have to assist the Returning Officer and under sub-section (2) they will, subject to the control of the Returning Officer, be competent to perform all or any of the functions of the Returning Officer, but under the proviso thereto no Assistant Returning Officer shall perform any of the functions of the Returning Officer which relate to the acceptance of a nomination paper or to the scrutiny of nominations or to the counting of votes unless the Returning Officer is unavoidably prevented from performing the said function. The proviso appears to contemplate only temporary absence of the ReturningOfficer from his duties. Since Shri S.K.Bedekar has now proceeded on leave on account of illness for about a month, it appears nevessary to appoint a Returning Officer in his place and there would be no legal objction to the Election Commission appointing another Returning Officer under section 20 in place of Shri Bedekar. Such appointment will not lead to any complications as such power vests in the Election Commission (see sections 14 and 15 of the General Clauses Act, 1897).

Id/- J. R. DHURANDHAR.

Remebrancer of Legal Affairs.

U.R. to P.& S.D.No.18925, dated the 26th November 1951.

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Legal Deptt.
25876 dt.15.12.51.

Submitted with reference to the Chief Electoral Officer's note on pp.1-2 ante.

2. The Chief Electoral Officer has informed the various candidates that proded each candidate's authority for the relevant polling station is produced there is no objection to

a) one polling agent acting for two candidates eg. for Assembly & House of People in the same polling station, or

b) one polling agent acting for different candidates of the same party at several polling stations, staying for a short time at each station. The R.L.A. is requested to confirm this view.

Id/-

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THE view taken by the Chief Electoral Officer is correct. But as pointed out in this Department U.R.No.20005, dated the 14th December 1951, the Political and Service Department may obtain the instructions of the Election Commission in such matters.

Id/- J.R.DHURANDHAR.
Remembrancer of Legal Affairs.

U.R. to P.& S.D.mNo.20191, dated the 18th December 1951.

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